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ABSTRACT

This report summarizes information from states that responded to a survey on the topic of age of majority for educational decision making. Information was gathered from 40 states during the months of March and April 1999. Results indicate: (1) in 33 of the 40 states, 18 is the age of majority for educational decision making; (2) 23 of the responding states currently have laws, policies, or guidelines regarding the transferring of parental rights to students at the age of majority; (3) 24 of the responding states do not have laws, policies, or guidelines about the determination of competency at the age of majority, however, 14 states do have such laws, policies, or guidelines; (4) 18 of the responding states have laws, polices, or guidelines related to designating a guardian or advocate for a youth at the age of majority who is incompetent, while 19 do not; (5) 31 states indicated that there is a designated contact person who fields questions about age of majority and related guardianship matters for students with disabilities. A state-by-state summary sheet of responses is provided. (CR)

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ED 432 872

QUICK TURN AROUND PROJECT FORUM

NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION, INC.

QTA – A BRIEF ANALYSIS OF A CRITICAL ISSUE IN SPECIAL EDUCATION

ISSUE: AGE OF MAJORITY

AUGUST 1999

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Quick Turn Around

Project FORUM

QTA - a brief analysis of a critical issue in special education

Issue: Age of Majority **Date: August 1999**

Purpose

This QTA is a summary of information from 40 states that responded to a survey on the topic of *age of majority* for educational decision making. The purpose of this brief analysis is to provide state agency personnel and other stakeholders with information regarding existing state laws on this topic, and examine some of the challenges in this area.

Federal Legislation

The 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) require that "...when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--

(A) the public agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution." [20 U.S.C. §1415(m)(1)]

A special rule in the federal statute applies to states that allow for determination of competency related to educational matters at *age of majority*. This is explained in Attachment 1 to the final regulations for the 1997 IDEA Amendments, issued March 12, 1999: "In some States, there may be additional laws and procedures that allow for a lesser determination of competency for specific purposes, such as competency for providing informed consent with respect to the individual's educational program.... Under the provision in the special rule that specifies appointing 'the parent, or, if the parent is not available, another appropriate individual,' a guardian or surrogate could be an appropriate individual to represent the educational interests of the student." [Federal Register, Vol.64, No.48, p. 12617]

Therefore, federal law requires certain action at the *age of majority;* however, the state determines the actual age. The state may or may not have laws, policies or guidelines regarding transferring rights or determining competency for educational decision making.

Project FORUM Inquiry

As part of Project FORUM's Cooperative Agreement with the U.S. Department of Education's Office of Special Education Programs (OSEP), a survey was sent to all states and non-state jurisdictions requesting information regarding state laws and policies concerning age of majority for educational decision-making, transferring rights at the age of majority, determining competency at the age of majority, and designating guardianship for a youth who may be incompetent. This information was gathered from states during the months of March and April, 1999. Responses were received from 40 states.

This document is available in alternative formats. For details, please contact Project FORUM staff at 703-519-3800 (voice) or 7008 (TDD).

Inquiry Results

Age of Majority

In 33 of the 40 responding states, 18 is the *age of majority* for educational decision making. The age is 19 in Alabama and Nebraska, and 16 in Wyoming. Colorado, Pennsylvania and New Hampshire hold the standard at age 21. However, in New Hampshire the age is 21 only for a student who remains eligible under the IDEA and continues to be claimed as a dependent by his parents/guardian. In Maryland, local education agencies have the authority to determine the age of majority for educational decision making.

Transferring of Parental Rights

Twenty-three of the responding states currently have laws, policies, or guidelines regarding the *transferring of parental rights* to students at the age of majority. Seventeen states indicated they do not have such laws.

Determining Competency

Twenty-four of the responding states do not have laws, policies or guidelines about the *determination of competency* at the age of majority. There are, however, such laws, policies or guidelines in at least 14 states. Two of the responding states did not provide information on this topic. Anecdotal comments from survey respondents indicate that in many states a youth must be determined *incompetent* by an appropriate court or other administrative body in order for rights not to be transferred at age of majority.

Designating Guardianship

Eighteen of the responding states have laws, policies or guidelines related to *designating a guardian* or advocate at the age of majority for a youth who is incompetent; 19 do not. Alaska is currently drafting such a law. Two of the responding states did not provide information on this topic.

State-Level Contact Person

Finally, when asked about someone at the state level who fields questions about age of majority and related guardianship matters for students with disabilities, 31 states indicated there is a designated contact person for these issues.

Concluding Remarks

Although nearly all of the responding states identified an age of majority for educational decision making and many states have laws, policies or guidelines on transferring rights, determining competency, and designating guardianship, states are struggling with a number of issues. Some of these issues are:

- Involvement of parents in the educational process once the youth has reached age of majority
- Informing parents of educational decisions once the youth reaches age of majority
- Parental rights once the youth has reached age of majority, but is still considered a dependent by the Internal Revenue Service
- Informing students about the implications of reaching the age of majority

In most situations, the transfer of educational decision making rights from parents to a youth with a disability is a gradual process and does not create family or school conflict. However, states are looking for guidance on these issues and value information from other states' experiences.

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IDEAs that Work
U.S. Office of Special Education Programs

Age of Majority (N=40)

#1 According to your state law, what is the age of majority for educational decision-making?
#2 Do you have any state laws/policies/guidelines on transferring parental rights to students at the age of majority?
#3 Do you have any state laws/policies/guidelines on determining competency at the age of majority?
#4 Do you have any state laws/policies/guidelines on the topic of designating a guardian or advocate at the age of majority for students with disabilities?
#5 Is there someone at the state level who fields questions about age of majority and related guardianship matters for students with disabilities?

State	#1	#2	#3	#4	#5
AL	19	Yes	No	No	Yes
AK	18	Yes	Yes	in process	No
AZ	18	No	No	No	Yes
CA	18	Yes	No	Yes	Yes
CO	21*	No	Yes	Yes	Yes
CT	18	Yes	Yes	No	Yes
DE	18	No	No	No	Yes
FL	18	No	No	No	No
GA	18	No	No	No	Yes
HI	18	Yes	No	No	Yes
ID	18	Yes	Yes	Yes	No
IL	18	Yes	No	Yes	Yes
IN	18	No	No	No	No
KS	18	Yes	No	No	Yes
KY	18	Yes	No	Yes	Yes
LA	18	No	No	No	Yes
ME	18	No	Yes	Yes	Yes
MD	none **	No	No	No	Yes
MA	18	Yes	No	No	Yes
MI	18	Yes	Yes	Yes	Yes
MN	18	Yes	No	No	Yes
MO	18	Yes	No	Yes	Yes
MT	18	Yes	Yes	Yes	Yes
NE	19	No	No	No	Yes
NH	21***	Yes	Yes	Yes	Yes
NJ	18	Yes	Yes	Yes	Yes
NM	18	Yes	Yes	Yes	Yes
NY	18	No	No	No	No
NC	18	No	No	No	No
ND	18	Yes	No	Yes	Yes
OH	18	Yes	No	No	Yes
OR	18	No	Yes	No	Yes
PA	21	Yes	No	Yes	No
RI	18	No			Yes
SC	18	No	Yes	Yes	Yes
TN	18	No	No	No	No
VA	18	Yes			
WV	18	Yes	Yes	Yes	Yes
WI	18	Yes	Yes	Yes	Yes
WY	16	No	No	Yes	Yes

* 21 or age of emancipation.
** There is no state law. LEAs make decisions.
*** If the student remains eligible under IDEA and continues to be claimed as a dependent by his parents/guardian.